

AN APPELLATE PRIMER:

The ABC's of Appeals, Special Actions, & Post-Conviction Relief

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SPECIAL ACTIONS

Presented By:

JACOB LINES

Deputy Pima County Attorney
Tucson, Arizona

ELIZABETH ORTIZ

APAAC Executive Director
Phoenix, Arizona

Distributed By:

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL

1951 West Camelback Rd., Suite 202
Phoenix, Arizona 85015

Rule 1. Nature of the Special Action

(a) Relief previously obtained against a body, officer, or person by writs of certiorari, mandamus, or prohibition in the trial or appellate courts shall be obtained in an action under this Rule, and any reference in any statute or rule to any of these writs, unless excepted in the next subsection, shall be deemed to refer to the special action authorized under this Rule. Special forms and proceedings for these writs are replaced by the special action provided by this Rule, and designation of the proceedings as certiorari, mandamus, or prohibition is neither necessary nor proper. Except as authorized by statute, the special action shall not be available where there is an equally plain, speedy, and adequate remedy by appeal; and nothing in these rules shall be construed as enlarging the scope of the relief traditionally granted under the writs of certiorari, mandamus, and prohibition.

(b) Where a statute expressly authorizes proceedings under certiorari, mandamus, or prohibition, the proceedings shall be known as a statutory special action, as distinguished from those applications for writs of certiorari, mandamus, or prohibition, originating under A.R.S. §§ 12-2001, 12-2029 or the common law, which are special actions. Where a statutory special action is involved, the questions to be raised and considered are wholly unaffected by this Rule, but the provisions of this Rule as to parties, procedure, interlocutory orders and stays, and judgments shall apply.

Applicable Decisions and Rules

- “Whether to accept jurisdiction is a matter for the superior court’s discretion, and appropriate when no equally plain, speedy, and adequate remedy by appeal exists.” ***Home Builders Ass’n of Cent. Arizona v. Kard*** (App. Div.1 2008) 219 Ariz. 374, 199 P.3d 629.
- “The decision to accept jurisdiction over a special action is largely discretionary and should be reserved for extraordinary circumstances.” ***Williams v. Miles*** (App. Div.1 2006) 212 Ariz. 155, 128 P.3d 778. See also *State ex rel. Romley v. Fields*, 201 Ariz. 321, 323, ¶ 4, 35 P.3d 82, 84 (App.2001).
- **A.R.S. § 12-2001.**
 - Granting of writ - The writ of certiorari may be granted by the supreme and superior courts or by any judge thereof, in all cases when an inferior tribunal, board or officer, exercising judicial functions, has exceeded its jurisdiction and there is no appeal, nor, in the judgment of the court, a plain, speedy and adequate remedy.
- **A.R.S. § 12-2029.** Disobedience of writ; classification

- A. If a person upon whom the peremptory writ of mandate has been personally served, without just excuse, knowingly fails or refuses to obey the writ, such person is guilty of a class 3 misdemeanor and the court may make any orders necessary and proper for complete enforcement of the writ.
- B. If a fine is imposed upon an officer who draws a salary from the state or a county, a certified copy of the order shall be forwarded to the department of administration or board of supervisors as the case may be, and the amount of the fine shall be retained from the salary of such officer.

Rule 2. Parties

(a) Parties.

(1) General. Any person who previously could institute an application for a writ of mandamus, prohibition, or certiorari may institute proceedings for a special action. The complaint shall join as a defendant the body, officer, or person against whom relief is sought. If any public body, tribunal, or officer is named as a defendant, the real party or parties in interest shall also be joined as defendants.

(2) Victims. The victim as defined in Rule 39(a), Rules of Criminal Procedure, may institute proceedings for a special action seeking relief from an order denying any right guaranteed to victims under Arizona Constitution Art. 2, § 2.1, any implementing legislation or court rules. Such proceedings may also be instituted by the prosecutor at the request of the victim.

(b) Other Persons. The court may direct that notice of the action be given to any person. It may allow other persons to intervene subject to the provisions of Rule 24 of the Rules of Civil Procedure; or may order their joinder as parties; or may allow them to participate *amicus curiae*.

Applicable Decisions and Rules

- State was proper party to bring special action seeking review of trial court's denial of defendant's motion for reconsideration; the defendant brought the motion after the trial court rejected a plea agreement, state has standing to object when court attempts to proceed in disregard of plea agreement and state has interest in reinstating plea agreement to which it was a party. ***State ex rel. Bowers v. Superior Court In and For County of Navajo*** (App. Div.1 1992) 173 Ariz. 34, 839 P.2d 454.
- **Arizona Rules of Civil Procedure, Rule 24. Intervention**
 - Rule 24(a). Intervention of Right

- Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.
- Rule 24(b). Permissive intervention
 - Upon timely application anyone may be permitted to intervene in an action:
 - 1. When a statute confers a conditional right to intervene.
 - 2. When an applicant's claim or defense and the main action have a question of law or fact in common.
 - In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.
- Rule 24(c). Procedure
 - A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.
- Rule 24(d). Time to answer
 - If the motion to intervene is granted, the plaintiff and defendant shall be allowed a reasonable time, not exceeding twenty days, in which to answer the pleading of the intervener.

Rule 3. Questions Raised

The only questions that may be raised in a special action are:

- (a) Whether the defendant has failed to exercise discretion which he has a duty to exercise; or to perform a duty required by law as to which he has no discretion; or
- (b) Whether the defendant has proceeded or is threatening to proceed without or in excess of jurisdiction or legal authority; or
- (c) Whether a determination was arbitrary and capricious or an abuse of discretion.

Applicable Decisions and Rules

- The Court of Appeals' and the Supreme Court's special action jurisdiction is highly discretionary. *Arizona Early Childhood Development & Health Bd. v. Brewer* (2009) 221 Ariz. 467, 212 P.3d 805; see also *Snyder v. Donato* (App. Div.1 2005) 211 Ariz. 117, 118 P.3d 632.
- Generally, a superior court does not abuse its discretion in denying special action relief where a criminal defendant could raise double jeopardy as a bar to further proceedings. The state is limited to presentation of errors that occur prior to the attachment of jeopardy. *State ex rel. McDougall v. Tvedt* (App. Div.1 1989) 163 Ariz. 281, 787 P.2d 1077.

Rule 4. Procedure

(a) Special action. An action under this Rule shall be known as a special action, and in a proper case may be brought in the Supreme Court, the Court of Appeals, or the Superior Court.

(b) Where action brought. An action brought in the Superior Court under this Rule shall be brought in the county in which the body or officer has or should have determined the matter to be reviewed, or, in the case of a state officer or body, either in Maricopa County or in the county of residence of the plaintiff; or in case of any public officer or body, or of a private corporation, in the county of the principal place of business of such officer or body or corporation; or if there is no principal place of business in Arizona for a private corporation defendant, the action may be brought in Maricopa County or, at the option of the plaintiff, in the county of his residence. Where the action is brought in a Court of Appeals, it shall be brought before whichever Court of Appeals has territorial jurisdiction over the county in which the action might have been brought had it been presented to a Superior Court.

(c) Time for Service of Complaint and Answer. The special action may be instituted with or without an application for an order to show cause why the requested relief should not be granted. The summons and complaint and order to show cause, if any, shall be served as process is served under Rules 4, 4.1 or 4.2, as applicable, of the Rules of Civil Procedure, unless the court otherwise specifies the manner and time within which service shall be made. If a show cause procedure is used, the court shall set a speedy return date. If that procedure is not used, the usual time periods established by the Rules of Civil Procedure shall apply, but all times may be specially modified by court order to achieve expeditious determination of the cause.

(d) Pleadings. There shall be a complaint, which may be verified or accompanied by affidavits or other written proof, and an answer by the defendant or the real party in interest, or such other responsive pleadings as may be appropriate. The court may order any party or persons to file with the court all or any part of any records in his or its possession.

(e) Caption. In any special action filed against a Superior Court Judge, Court of Appeals Judge or other officer in a Court of Appeals or in the Supreme Court and in any petition for review filed pursuant to Rule 8(b) of these rules, the caption shall state the name of the judge or officer followed by the person's official title, e.g., "[Name of Petitioner], Petitioner v. Hon. [Name of Judge], Judge of the Superior Court of the State of Arizona, in and for the County of [Name of County], Respondent and [Name of Real Party in Interest], Real Party in Interest."

(f) Trial. If a triable issue of fact is raised in an action under this Rule, it shall be tried subject to special orders concerning discovery. If the petition is filed in an appellate court, that court may, if it believes that the matter should be tried, either designate a master or transmit the matter to a Superior Court for trial, subject to reference back if the court desires. The court may use an advisory jury on matters of fact.

(g) [Costs and attorneys' fees.]¹ In any special action, a party may claim costs and attorneys' fees as in other civil actions. In a special action in an appellate court, a request for attorneys' fees shall be made in the pleadings or by motion filed and served prior to oral argument or submission of the special action. Within ten days after the court has issued an order declining jurisdiction or the clerk has given notice that a decision has been rendered, a party entitled to costs or attorneys' fees may file in the appellate court a statement of costs including attorneys' fees, and objections and a reply may thereafter be filed, all in accordance with the provisions of Rule 21, Arizona Rules of Civil Appellate Procedure.

Applicable Decisions and Rules

- Under rule stating that special action shall, in the case of state officer or body, be brought either in Maricopa County or county of plaintiff's residence, "residence" means where petitioner is living without regard to his domicile. ***Belcher v. Raines*** (App. Div.2 1981) 130 Ariz. 464, 636 P.2d 1246.
- There is no time limit as to when petition for special action must be brought, and acceptance of petition for special action is discretionary with court. ***Northern Propane Gas Co. v. Kipps*** (1980) 127 Ariz. 522, 622 P.2d 469.
- **Arizona Rules of Civil Procedure, Rule 21.** Misjoinder and non-joinder of parties
 - Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.
- **Arizona Rules of Civil Procedure, Rule 4.** Process, Rules of Civil Procedure
 - Rule 4(a). Summons; Issuance
 - When the complaint or any other pleading which requires service of a summons is filed, the clerk shall endorse thereon the day and hour on

which it was filed and the number of the action, and shall forthwith issue a summons. The party filing the pleading may present a summons to the clerk for signature and seal. If in proper form, the clerk shall sign and seal the summons and issue it to the party for service or for delivery to a person authorized by Rule 4(d) to serve it. A summons, or a copy of the summons if addressed to multiple persons, shall be issued for each person to be served.

- Rule 4(b). Summons; Form; Replacement Summons
 - The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the person to be served, state the name and address of the attorney, if any, for the party on whose behalf service is being made, and otherwise that party's address. The summons shall state the time within which these Rules require the person being served to appear and defend, and shall notify that person that in case of a failure to do so judgment by default will be rendered against that person for the relief demanded in the pleading served. A summons, or a copy of the summons in the case of multiple persons to be served, shall be served together with a copy of the pleading to be served. If a summons is returned without being served, or if it has been lost, the clerk may upon request issue a replacement summons in the same form as the original. A replacement summons shall be issued and served within the time prescribed by Rule 4(i) of these Rules for service of the original summons. The summons shall state that "requests for reasonable accommodation for persons with disabilities must be made to the court by parties at least 3 working days in advance of a scheduled court proceeding."
- Rule 4(c). Summons; Parties Named Fictitiously; Return
 - When a pleading which requires service of a summons designates a party whose true name is unknown by a fictitious name pursuant to Rule 10(f) of these Rules, the summons may issue directed to the fictitious name employed for that purpose. The return of service of process upon a person designated therein by a fictitious name shall state the true name of the person or party upon whom it was served.
- Rule 4(d). Process; By Whom Served
 - Service of process shall be by a sheriff, a sheriff's deputy, a private process server registered with the clerk of the court pursuant to subpart (e) of this Rule, or any other person specially appointed by the court, except that a subpoena may be served as provided in Rule 45. Service of

process may also be made by a party or that party's attorney where expressly authorized by these Rules. A private process server or specially appointed person shall be not less than twenty-one (21) years of age and shall not be a party, an attorney, or the employee of an attorney in the action whose process is being served. Special appointments to serve process shall be requested by motion to the presiding Superior Court judge and the motion shall be accompanied by a proposed form of order. The party submitting the proposed form of order shall comply with Rule 5(j)(2) under which the filing party includes the appropriate number of copies to be addressed to each party who has entered an appearance in the case and stamped, addressed envelopes for distribution of the resulting order, unless otherwise provided by the Presiding Judge. If the proposed form of order is signed, no minute entry shall issue. Special appointments shall be granted freely, are valid only for the cause specified in the motion, and do not constitute an appointment as a registered private process server.

- Rule 4(e). State-wide Registration of Private Process Servers
 - A person who files with the clerk of the court an application approved by the Supreme Court, stating that the applicant has been a bona fide resident of the State of Arizona for at least one year immediately preceding the application and that the applicant will well and faithfully serve process in accordance with the law, and who otherwise complies with the procedures set forth by the Supreme Court in its Administrative Order regarding this subsection, shall, upon approval of the court or presiding judge thereof, in the County where the application is filed, be registered with the clerk as a private process server until such approval is withdrawn by the court in its discretion. The clerk shall maintain a register for this purpose. Such private process server shall be entitled to serve in such capacity for any court of the state anywhere within the State.
- Rule 4(f). Service; Acceptance or Waiver; Voluntary Appearance
 - The person to whom a summons or other process is directed may accept service, or waive issuance or service thereof, in writing, signed by that person or by that person's authorized agent or attorney, and the acceptance or waiver shall be filed in the action. A person upon whom service is required may, in person or by attorney or by an authorized agent, enter an appearance in open court, and the appearance shall be noted by the clerk upon the docket and entered in the minutes. Such

waiver, acceptance or appearance shall have the same force and effect as if a summons had been issued and served. The filing of a pleading responsive to a pleading allowed under Rule 7(a) of these Rules shall constitute an appearance.

○ Rule 4(g). Return of Service

- If service is not accepted or waived, then the person effecting service shall make proof thereof to the court. When the process is served by a sheriff or a sheriff's deputy, the return shall be officially endorsed on or attached thereto and returned to the court promptly. If served by a person other than the sheriff or a deputy sheriff, return and proof of service shall be made promptly by affidavit thereof. Each such affidavit of a registered private process server shall include clear reference to the county where that private process server is registered. When the summons is served by publication, the return of the person making such service shall be made in the manner specified in Rules 4.1(n) and 4.2(e) of these Rules. Proof of service in a place not within any judicial district of the United States shall, if effected under paragraph (1) of Rule 4.2(h), be made pursuant to the applicable treaty or convention; and shall, if effected under paragraph (2) or (3) thereof, include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court. In any event the return shall be made within the time during which the person served must respond to process. Failure to make proof of service does not affect the validity thereof.

○ Rule 4(h). Amendment of Process or Amendment of Proof of Service

- At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

○ Rule 4(i). Summons; Time Limit for Service

- If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. This subdivision does not apply to service in a foreign country pursuant to Rule 4.2(h), (i), (j) and (k) of these rules.

• **Arizona Rules of Civil Procedure, Rule 4.1. Service of Process Within Arizona**

- (a) Territorial Limits of Effective Service. All process may be served anywhere within the territorial limits of the state.
- (b) Summons; Service With Complaint. The summons and pleading being served shall be served together. The party procuring service is responsible for service of a summons and the pleading being served within the time allowed under Rule 4(i) of these Rules and shall furnish the person effecting service with the necessary copies of the pleading to be served.
- (c) Waiver of Service; Duty to Save Costs of Service; Request to Waive.
 - (1) A defendant who waives service of a summons does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of such defendant.
 - (2) An individual, governmental entity, corporation, partnership or unincorporated association that is subject to service under paragraph (d), (h), (i) or (k) of this Rule 4.1 and that receives notice of an action in the manner provided in this paragraph has a duty to avoid unnecessary costs of serving the summons. To avoid costs, the plaintiff may notify such a defendant of the commencement of the action and request that the defendant waive service of a summons. The notice and request:
 - (A) shall be in writing and shall be addressed directly to the defendant in accordance with paragraph (d), (h), (i) or (k) of this Rule 4.1, as applicable;
 - (B) shall be dispatched through first-class mail or other reliable means;
 - (C) shall be accompanied by a copy of the complaint and shall identify the court in which it has been filed;
 - (D) shall inform the defendant, by means of a text prescribed in an official form promulgated pursuant to Rule 84, of the consequences of compliance and of a failure to comply with the request;
 - (E) shall set forth the date on which the request is sent;
 - (F) shall allow the defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent; and
 - (G) shall provide the defendant with an extra copy of the notice and request, as well as a prepaid means of compliance in writing.
- If a defendant fails to comply with a request for waiver made by a plaintiff located within the United States, the court shall impose the costs subsequently

incurred in effecting service on the defendant unless good cause for the failure be shown.

- (3) A defendant that, before being served with process, timely returns a waiver so requested is not required to serve an answer to the complaint until 60 days after the date on which the request for waiver of service was sent.
 - (4) When the plaintiff files a waiver of service with the court, the action shall proceed, except as provided in paragraph (3), as if a summons and the complaint had been served at the time of filing the waiver, and no proof of service shall be required.
 - (5) The costs to be imposed on a defendant under paragraph (2) for failure to comply with a request to waive service of a summons shall include the costs subsequently incurred in effecting service under paragraph (d), (h), (i) or (k) of this Rule 4.1, together with the costs, including a reasonable attorney's fee, of any motion required to collect the costs of service.
- (d) Service of Summons Upon Individuals. Service upon an individual from whom a waiver has not been obtained and filed, other than those specified in paragraphs (e), (f) and (g) of this Rule 4.1, shall be effected by delivering a copy of the summons and of the pleading to that individual personally or by leaving copies thereof at that individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the pleading to an agent authorized by appointment or by law to receive service of process.
 - (e) Service of Summons Upon Minors. Service upon a minor under the age of sixteen years shall be effected by service in the manner set forth in paragraph (d) of this Rule 4.1 upon the minor and upon the minor's father, mother or guardian, within this state, or if none is found therein, then upon any person having the care and control of such minor, or with whom the minor resides.
 - (f) Service of Summons Upon A Minor With Guardian or Conservator. Service upon a minor for whom a guardian or conservator has been appointed in this state shall be effected by service in the manner set forth in paragraph (d) of this Rule 4.1 upon such guardian or conservator and minor.
 - (g) Service of Summons Upon Incompetent Persons. Service upon a person who has been judicially declared to be insane, gravely disabled, incapacitated or mentally incompetent to manage that person's property and for whom a guardian or conservator has been appointed in this state shall be effected by service in the manner set forth in paragraph (d) of this Rule 4.1 upon such

person and also upon that person's guardian or conservator, or if no guardian or conservator has been appointed, upon such person as the court designates.

- (h) Service of Summons Upon the State. If a waiver has not been obtained and filed, service upon the state shall be effected by delivering a copy of the summons and of the pleading to the attorney general.
- (i) Service of Summons Upon a County, Municipal Corporation or Other Governmental Subdivision. Service upon a county or a municipal corporation or other governmental subdivision of the state subject to suit, and from which a waiver has not been obtained and filed, shall be effected by delivering a copy of the summons and of the pleading to the chief executive officer, the secretary, clerk, or recording officer thereof.
- (j) Service of Summons Upon Other Governmental Entities. Service upon any governmental entity not listed above shall be effected by serving the person, officer, group or body responsible for the administration of that entity or by serving the appropriate legal officer, if any, representing the entity. Service upon any person who is a member of the "group" or "body" responsible for the administration of the entity shall be sufficient.
- (k) Service of Summons Upon Corporations, Partnerships or Other Unincorporated Associations. Service upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit in a common name, and from which a waiver has not been obtained and filed, shall be effected by delivering a copy of the summons and of the pleading to a partner, an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party on whose behalf the agent accepted or received service.
- (l) Service of Summons Upon a Domestic Corporation If Authorized Officer or Agent Not Found Within the State. When a domestic corporation does not have an officer or agent in this state upon whom legal service of process can be made, service upon such domestic corporation shall be effected by depositing two copies of the summons and of the pleading being served in the office of the Corporation Commission, which shall be deemed personal service on such corporation. The return of the sheriff of the county in which the action or proceeding is brought that after diligent search or inquiry the sheriff has been unable to find any officer or agent of such corporation upon whom process may be served, shall be prima facie evidence that the corporation does not have such an officer or agent in this state. The Corporation Commission shall file one of the

copies in its office and immediately mail the other copy, postage prepaid, to the office of the corporation, or to the president, secretary or any director or officer of such corporation as appears or is ascertained by the Corporation Commission from the articles of incorporation or other papers on file in its office, or otherwise.

- (m) Alternative or Substituted Service. If service by one of the means set forth in the preceding paragraphs of this Rule 4.1 proves impracticable, then service may be accomplished in such manner, other than by publication, as the court, upon motion and without notice, may direct. Whenever the court allows an alternate or substitute form of service pursuant to this subpart, reasonable efforts shall be undertaken by the party making service to assure that actual notice of the commencement of the action is provided to the person to be served and, in any event, the summons and the pleading to be served, as well as any order of the court authorizing an alternative method of service, shall be mailed to the last known business or residence address of the person to be served. Service by publication may be employed only under the circumstances, and in accordance with the procedures, specified in Rules 4.1(n), 4.1(o), 4.2(f) and 4.2(g) of these Rules.
- (n) Service by Publication; Return. Where the person to be served is one whose residence is unknown to the party seeking service but whose last known residence address was within the state, or has avoided service of process, and service by publication is the best means practicable under the circumstances for providing notice of the institution of the action, then service may be made by publication in accordance with the requirements of this subpart. Such service shall be made by publication of the summons, and of a statement as to the manner in which a copy of the pleading being served may be obtained, at least once a week for four successive weeks (1) in a newspaper published in the county where the action is pending, and (2) in a newspaper published in the county of the last known residence of the person to be served if different from the county where the action is pending. If no newspaper is published in any such county, then the required publications shall be made in a newspaper published in an adjoining county. The service shall be complete thirty days after the first publication. When the residence of the person to be served is known, the party or officer making service shall also, on or before the date of the first publication, mail the summons and a copy of the pleading being served, postage prepaid, to that person at that person's place of residence. Service by publication and the return thereof may be made by the party procuring service or that party's attorney in the same manner as though made by an officer. The party or officer

making service shall file an affidavit showing the manner and dates of the publication and mailing, and the circumstances warranting the utilization of the procedure authorized by this subpart, which shall be prima facie evidence of compliance herewith. A printed copy of the publication shall accompany the affidavit. If the residence of the party being served is unknown, and for that reason no mailing was made, the affidavit shall so state.

- (o) Service by Publication; Unknown Heirs in Real Property Actions. When in an action for the foreclosure of a mortgage on real property or in any action involving title to real property, it is necessary for a complete determination of the action that the unknown heirs of a deceased person be made parties, they may be sued as the unknown heirs of the decedent, and service of a summons may be made on them by publication in the county where the action is pending, as provided in subpart (n) of this Rule 4.1.

- **Rule 4.2. Service of Process Outside the State**

- Rule 4.2(a). Extraterritorial Jurisdiction; Personal Service Out of State
 - A court of this state may exercise personal jurisdiction over parties, whether found within or outside the state, to the maximum extent permitted by the Constitution of this state and the Constitution of the United States. Service upon any such party located outside the state may be made as provided in this Rule 4.2, and when so made shall be of the same effect as personal service within the state.
- Rule 4.2(b). Direct Service
 - Service of process may be made outside the state but within the United States in the same manner provided in Rule 4.1(d)-(l) of these Rules by a person authorized to serve process under the law of the state where such service is made. Such service shall be complete when made and time for purposes of Rule 4.2(m) shall begin to run at that time, provided that before any default may be had on such service, there shall be filed an affidavit of service showing the circumstances warranting the utilization of this procedure and attaching an affidavit of the process server showing the fact and circumstances of the service.
- Rule 4.2(c). Service by Mail; Return
 - When the whereabouts of a party outside the state is known, service may be made by depositing the summons and a copy of the pleading being served in the post office, postage prepaid, to be sent to the person to be served by any form of mail requiring a signed and returned receipt. Service by mail pursuant to this subpart and the return thereof may be made by the party procuring service or by that party's attorney. Upon

return through the post office of the signed receipt, the serving party shall file an affidavit with the court stating (1) that the party being served is known to be located outside the state, (2) that the summons and a copy of the pleading were dispatched to the party being served; (3) that such papers were in fact received by the party as evidence by the receipt, a copy of which shall be attached to the affidavit; and (4) the date of receipt by the party being served and the date of the return of the receipt to the sender. This affidavit shall be prima facie evidence of personal service of the summons and the pleading and service shall be deemed complete and time shall begin to run for the purposes of Rule 4.2(m) of these Rules from the date of receipt by the party being served, provided that no default may be had on such service until such an affidavit has been filed.

- Rule 4.2(d). Waiver of Service; Duty to Save Costs of Service; Request to Waive
 - (1) A defendant who waives service of a summons does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of such defendant.
 - (2) An individual, corporation or association that is subject to service under paragraph (b), (c), (h), (i) or (k) of this Rule 4.2 and that receives notice of an action in the manner provided in this paragraph has a duty to avoid unnecessary costs of serving the summons. To avoid costs, the plaintiff may notify such a defendant of the commencement of the action and request that the defendant waive service of the summons. The notice and request:
 - (A) shall be in writing and shall be addressed directly to the defendant in accordance with paragraph (b), (c), (h), (i) or (k) of this Rule 4.2, as applicable;
 - (B) shall be dispatched through first-class mail or other reliable means;
 - (C) shall be accompanied by a copy of the complaint and shall identify the court in which it has been filed;
 - (D) shall inform the defendant, by means of a text prescribed in an official form promulgated pursuant to Rule 84, of the consequences of compliance and of a failure to comply with the request;
 - (E) shall set forth the date on which request is sent;
 - (F) shall allow the defendant a reasonable time to return the waiver, which shall be at least 30 days from the date the notice is

sent, or 60 days from that date if the defendant is addressed outside any judicial district of the United States; and

- (G) shall provide the defendant with an extra copy of the notice and request, as well as prepaid means of compliance in writing.
- If a defendant located within the United States fails to comply with a request for waiver made by a plaintiff located within the United States, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure be shown.
- (3) A defendant that, before being served with process, timely returns a waiver so requested is not required to serve an answer to the complaint until 60 days after the date on which the request for waiver of service was sent, or 90 days after that date if the defendant was addressed outside any judicial district of the United States.
- (4) When the plaintiff files a waiver of service with the court, the action shall proceed, except as provided in paragraph (3), as if a summons and complaint had been served at the time of filing the waiver, and no proofs of service shall be required.
- (5) The costs to be imposed on a defendant under paragraph (2) for failure to comply with a request to waive service of a summons shall include the costs subsequently incurred in effecting service under paragraph (b), (c), (h), (i) or (k) of this Rule 4.2, together with the costs, including reasonable attorney's fees, of any motion required to collect the costs of service.
- Rule 4.2(e). Service Under Nonresident Motorist Act
 - In an action involving operation of a motor vehicle in this state, a nonresident minor, insane or incompetent person may be served in the manner provided by A.R.S. §§ 28-2321 through 28-2327 for service upon a nonresident in such cases as if that person were sui juris. When service of a copy of the summons and complaint is made pursuant to A.R.S. § 28-2327, the service shall be deemed complete thirty days after filing defendant's return receipt and plaintiff's affidavit of compliance, as required by A.R.S. § 28-2327, subsection A, paragraph 1, or, in case of personal service out of the state under A.R.S. § 28-2327, subsection A, paragraph 2, thirty days after filing the officer's return of such personal service. The defendant shall appear and answer within thirty days after completion of such service in the same manner and under the same penalties as if the defendant had been personally served with a summons within the county in which the action is pending.

- Rule 4.2(f). Service by Publication; Return
 - Where the person to be served is one whose present residence is unknown but whose last known residence was outside the state, or has avoided service of process, and service by publication is the best means practicable under the circumstances for providing notice of institution of the action, then service may be made by publication in accordance with the requirements of this subpart. Such service shall be made by publication of the summons, and of a statement as to the manner in which a copy of the pleading being served may be obtained, at least once a week for four successive weeks in a newspaper published in the county where the action is pending. If no newspaper is published in any such county, then the required publications shall be made in a newspaper published in an adjoining county. The service shall be complete thirty days after the first publication. When the residence of the person to be served is known, the party or officer making service shall also, on or before the date of the first publication, mail the summons and a copy of the pleading being served, postage prepaid, directed to that person at that person's place of residence.
 - Service by publication and the return thereof may be made by the party procuring service or that party's attorney in the same manner as though made by an officer. The party or officer making service shall file an affidavit showing the manner and dates of publication and mailing, and the circumstances warranting utilization of the procedure authorized by this subpart which shall be prima facie evidence of compliance herewith. A printed copy of the publication shall accompany the affidavit. If the residence of the person to be served is unknown, and for that reason no mailing was made, the affidavit shall so state.
- Rule 4.2(g). Service by Publication; Unknown Heirs in Real Property Actions
 - When in an action for the foreclosure of a mortgage on real property or in any action involving title to real property, it is necessary for a complete determination of the action that the unknown heirs of a deceased person be made parties, they may be sued as the unknown heirs of the decedent, and service of a summons may be made on them by publication in the county where the action is pending, as provided in subpart (e) of this Rule.
- Rule 4.2(h). Service of Summons Upon Corporations, Partnerships Unincorporated Associations Located Outside Arizona but Within the United States

- In case of a corporation or partnership or unincorporated association located outside the state but within the United States, service under this Rule shall be made on one of the persons specified in Rule 4.1(k).
- Rule 4.2(i). Service Upon Individuals in a Foreign Country
 - Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in a place not within any judicial district of the United States:
 - (1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or
 - (2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:
 - (A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or
 - (B) as directed by the foreign authority in response to a letter rogatory or letter of request; or
 - (C) unless prohibited by the law of the foreign country, by
 - (i) delivery to the party to be served personally of a copy of the summons and of the pleading; or
 - (ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or
 - (3) by other means not prohibited by international agreement as may be directed by the court.
- Rule 4.2(j). Service of Summons Upon Minors and Incompetent Persons in a Foreign Country
 - Service upon a minor, a minor with a guardian or an incompetent person in a place not within any judicial district of the United States shall be effected in the manner prescribed by paragraph (2)(A) or (2)(B) of subdivision (i) of this Rule 4.2 or by such means as the court may direct.
- Rule 4.2(k). Service of Summons Upon Corporation and Associations in a Foreign Country
 - Unless otherwise provided by federal law, service upon a corporation or upon a partnership or other unincorporated association that is subject to suit under a common name, and from which a waiver of service has not

been obtained and filed, shall be effected in a place not within any judicial district of the United States in any manner prescribed for individuals by subdivision (i) of this Rule 4.2 except personal delivery as provided in paragraph (2)(C)(i) thereof.

- Rule 4.2(l). Service of Summons Upon a Foreign State or Political Subdivision Thereof
 - Service of a summons upon a foreign state or a political subdivision, agency, or instrumentality thereof shall be effected pursuant to 28 U.S.C. § 1608.
- Rule 4.2(m). Time for Appearance After Service Outside State
 - Where service of the summons and of a copy of a pleading requiring service by summons is made outside the state by any means authorized by this Rule 4.2, other than subsection (d), the person served shall appear and answer within thirty days after completion thereof in the same manner and under the same penalties as if that person had been personally served with a summons within the county in which the action is pending.

Rule 5. Interlocutory Orders and Stays; Ex Parte Orders

The forms of alternative and peremptory writs shall not be used and are replaced by the orders and judgments prescribed in this Rule. The filing of a complaint in a special action and the setting of the matter for hearing shall not stay any proceedings in the court or tribunal as to which special relief is sought unless a stay is specifically ordered. The court in a special action may grant an interlocutory stay, either ex parte or after notice and hearing, in the same manner and subject to the same limitations as temporary restraining orders and preliminary injunctions are granted under Rule 65 of the Rules of Civil Procedure, and may on appeal grant an injunction under Rule 62(c) of the Rules of Civil Procedure.

Applicable Decisions and Rules

- **Arizona Rules of Civil Procedure, Rule 62(c),**
 - When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.
- **Arizona Rules of Civil Procedure, Rule 65. Injunctions**
 - Rule 65(a). Preliminary injunction; notice

- (1) Notice. No preliminary injunction shall be issued without notice to the adverse party.
- (2) Consolidation of hearing with trial on merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision (a)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.
- Rule 65(b). Deleted Sept. 15, 1987, effective Nov. 15, 1987
- Rule 65(c). Motion to dissolve or modify
 - Motions to dissolve or modify a preliminary injunction may be heard after an answer is filed, upon notice to the opposite party. If, upon hearing the motion, it appears that there is not sufficient grounds for the injunction, it shall be dissolved, or if it appears that the injunction is too broad, it shall be modified. A denial of the material allegations of the complaint shall not be sufficient ground for dissolution of a preliminary injunction unless the answer denying the allegations is verified.
- Rule 65(d). Temporary restraining order; notice; hearing; duration
 - A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice or the reasons supporting the claim that notice should not be required. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for

a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if the party does not do so, the court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

- Rule 65(e). Security
 - No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the State or of an officer or agency thereof.
 - The provisions of Rule 65.1 apply to a surety upon a bond or undertaking under this rule.
- Rule 65(f). Deleted, effective Nov. 1, 1967
- Rule 65(g). Security on injunction restraining collection of money; injunction made permanent
 - 1. Upon dissolution of a preliminary injunction or temporary restraining order restraining the collection of money, if the action is continued over for trial, the court shall require the defendant to give security to be approved by the court, and payable to the plaintiff in the amount previously enjoined and such additional amount as the court requires, and conditioned upon refunding to the plaintiff the amount of money, interest and costs which may be collected by the plaintiff in the action in the event a permanent injunction is ordered on final hearing.
 - 2. If a permanent injunction is ordered on final hearing, the court shall, on motion of the plaintiff, enter judgment against the principal and surety giving the security for the amount shown to have been collected and to which the plaintiff appears entitled.
- Rule 65(h). Form and scope of injunction or restraining order

- Every order granting an injunction and every restraining order shall set forth the reasons for its issuance and shall be specific in terms. It shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained, and it is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.
- Rule 65(i). Writs of injunction; where returnable; several parties
 - Writs of injunction granted to stay proceedings in an action, or to stay execution of a judgment, shall be returnable to and tried in the court where the action is pending or the judgment was rendered.
- Rule 65(j). Disobedience of injunction as contempt; order to show cause; warrant; attachment; punishment
 - 1. Disobedience of an injunction may be punished by the court as a contempt.
 - 2. When a party in whose favor an injunction has been issued files an affidavit that the party against whom the injunction was issued is guilty of disobeying the injunction and describes the acts constituting such disobedience, the court may order the person so charged to show cause at the time and place the court directs why such disobedient party should not be adjudged in contempt of the court which issued the injunction.
 - 3. The order, with a copy of the affidavit, shall be served upon the person charged with the contempt within sufficient time to enable that person to prepare and make return to the order.
 - 4. If such person fails or refuses to make return to the order to show cause a warrant of arrest may issue directing the sheriff or any constable of the county where the alleged contemnor resides or may be found, to arrest and bring the alleged contemnor before the court at a time and place directed by the court, and such person may be required to give bail for attendance at the trial and submission to the final judgment of the court.
 - 5. If the alleged contemnor is a corporation, an attachment for sequestration of the property of the corporation may be issued upon refusal or failure to appear.
 - 6. Upon the appearance of the alleged contemnor, or at the trial of the issue, the court shall hear the evidence, and if the person enjoined has disobeyed the injunction that person may be committed to jail until that

person is purged of the contempt as may be directed by the court or until that person is discharged by law.

Rule 6. Judgment

In a special action brought in the Superior Court, the judgment shall be in the form of a judgment for any civil action, with no special requirements heretofore peculiar to writs; the grounds of the decision shall be stated in the judgment. The judgment may grant to the plaintiff part or all of the relief requested, or may dismiss the action either on the merits or without prejudice. If the action was brought to review a determination or order of a body or officer, the judgment may annul or confirm the determination in whole or in part, or modify it, and may direct, order, or prohibit specified action by the defendant.

Applicable Decisions and Rules

- Failure of trial court to state grounds for its decision to deny special action relief to compel county authorities to admit plaintiff to a special rehabilitative program for child molesters did not preclude review of an otherwise adequate record in absence of a showing of prejudice. *King v. Neely* (App. Div.2 1984) 143 Ariz. 329, 693 P.2d 984.

Rule 7. Special Appellate Court Provisions

(a) A special action brought in any appellate court shall be initiated by the filing of a petition in the form prescribed by this rule.

(b) If a special action is brought in any appellate court, and if such an action might lawfully have been initiated in a lower court in the first instance, the petition shall also set forth the circumstances which in the opinion of the petitioner render it proper that the petition should be brought in the particular appellate court to which it is presented. If the appellate court finds such circumstances insufficient, the court will on that ground dismiss the petition.

(c) If an appellate court is in recess when the petition is filed, or it is impracticable for the court to hear the application for relief immediately, the chief justice or chief judge, or any other justice or judge designated by the chief justice or chief judge, may stay proceedings of a court or officer, subject to the limitations of Rule 65 of the Rules of Civil Procedure as to ex parte orders, until the hearing provided for in this subdivision has been held or until such time as the court may otherwise order.

(d) An appellate court in which a petition for special action is filed may, through its chief justice or chief judge, or any other justice or judge designated by the chief justice or chief judge, direct that on a certain day and hour oral argument be held on the petition. The chief justice or chief

judge, or any other justice or judge so designated, may direct that the petition and any response thereto be submitted without oral argument. In the Court of Appeals or the Supreme Court, the petition and all papers shall be served forthwith by the petitioner or his agent, and the time and manner in which service shall be made may be specified by the court. Objections to such relief shall be in the form of a written response, and shall be filed and served within seven days after service of the petition upon the respondent, or such lesser time as the court shall fix by order. No reply shall be filed by the petitioner unless the court has directed that the matter be submitted without oral argument, in which event a reply may be filed within the time set by the court. At the appointed time, if any, the court will hear the parties in order to determine whether jurisdiction shall be accepted. If the court accepts jurisdiction, the court will then render its decision on the merits after submission of such additional memoranda and portions of the record as the court deems appropriate. For cause shown, the appellate court may waive or order acceleration of any or all of the foregoing procedures.

(e) The petition shall consist of a single document. It shall include a jurisdictional statement, a statement of the issues, a statement of the facts material to a consideration of the issues presented, and an argument containing the petitioners' contentions with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and appropriate references to the record. A copy of the decision from which the petition is being taken shall be attached to the petition. All references to the record shall be supported by an appendix of documents in the record before the trial court that are necessary for a determination of the issues raised by the petition. The response to the petition shall, if necessary, be supported by an appendix of documents in the record before the trial court that are necessary for a determination of the issues raised by the petition which are not contained in the petitioner's appendix. If either party's appendix exceeds 15 pages in length, it shall be fastened together separately from the petition or response. Except by permission of the court, petitions and responses shall not exceed (i) 10,500 words if in proportionate typeface, or (ii) 30 pages if in monospace typeface, exclusive of the appendix and the copy of the decision from which the petition is being taken, or (iii) 36 pages if handwritten. The reply, if any, shall not exceed (i) 5,250 words if in proportionate typeface, or (ii) 15 pages if in monospaced typeface, or (iii) 18 pages if handwritten. The petition, response and any reply must otherwise comply with Rules 6(c) or 14(a)(1), ARCAP or Rules 31.12 or 31.13 of the Ariz. R. Crim. P. The petition, response and any reply must each be accompanied by a certificate of compliance that states the petition's line spacing and states either that (i) the petition uses a proportionately spaced typeface, together with the typeface, point size, and word count, or (ii) the petition uses a monospaced typeface, together with the number of characters per inch, or (iii) the petition is handwritten, together with the number of pages. A party preparing this certificate may rely on the word count of the processing system used to prepare the petition.

(f) An amicus curiae brief, or a request to participate as amicus curiae, shall conform to the requirements of Rule 16, Arizona Rules of Civil Appellate Procedure, and shall be filed as expeditiously as possible after the special action petition is filed.

(g) If in a special action relief is granted by the Supreme Court or by a Court of Appeals, the order granting relief shall take such form as the court directs, but in every such case the decision of the court shall be given in writing and the grounds of decision shall be stated. If in a special action brought in the Supreme Court or a Court of Appeals relief is denied, the decision of the Court may be made by order, and no written opinion shall be required.

(h) The provisions of A.R.S. § 12-2106 and of Rule 25, Rules of Civil Appellate Procedure, pertaining to damages for frivolous appeals or appeals for delay, shall apply to special actions.

(i) To the extent they are not inconsistent with these rules, the Arizona Rules of Civil Appellate Procedure shall apply to special actions.

(j) Filing may be accomplished by mail addressed to the clerk, but filing under this rule shall not be timely unless received by the clerk within the time fixed for filing.

Applicable Decisions and Rules

- Direct filing in Supreme Court of action to vacate order modifying terms of probation is exceptional, but is contemplated by Special Action Rule and would be entertained where, under circumstances of case, interests of justice would be better served by disposing of matter without requiring petitioner to return to court of appeals for a second time, with possible subsequent petition for review in Supreme Court. ***Green v. Superior Court In and For Cochise County*** (1982) 132 Ariz. 468, 647 P.2d 166.
- Failure of respondent to file timely written objections in special action would be viewed as an admission that petitioner was entitled to the relief requested, if debatable issues were presented. ***Warinner v. Superior Court of Maricopa County*** (App. Div.1 1974) 21 Ariz.App. 328, 519 P.2d 81
- **Arizona Rules of Civil Appellate Procedure, Rule 6(c)** Form of Motion Papers. All papers relating to motions may be produced by any process that results in a clear black image on white paper, including typing, printing, or photocopying. The paper must be white, opaque and unglazed, and only one side of the paper may be used. Motion papers shall be on paper 8 1/2 by 11 inches and shall contain a caption setting forth the name of the court, the title of the case, the case number and a brief descriptive title. Text shall be double-spaced; headings, quotations and footnotes may be indented and single-spaced. Either a proportionately spaced typeface of 14 points or more, or a monospaced typeface of no more than 10 1/2 characters per inch, shall be used for text, quotations,

and footnotes. A proportionately spaced typeface has characters with different widths (e.g., an acceptable proportionately spaced typeface is Times New Roman, 14 point). A monospaced typeface has characters with the same advanced width (e.g., an acceptable monospaced typeface is Courier New, 12 point). All margins must be at least 1 inch. Page numbers shall be placed in the bottom margin, but no text or footnotes may appear there. Text shall be in roman, non-script text, although italics, underline, or bold may be used for emphasis. Case names and signals shall be underlined or in italics. Headings shall be underlined, in italics, or in bold.

- **Arizona Rules of Civil Appellate Procedure, Rule 14(a)** Form and Size of Briefs.
 - (1) A brief shall comply with Rule 6(c), except that the brief's covers and the components of the brief excluded from the word count computation are exempt from the 14 point or 10 1/2 characters per inch typeface requirement.
- **Arizona Rules of Criminal Procedure, Rule 31.12.** Form of motions
 - All papers relating to motions may be produced by any process that results in a clear black image on white paper, including typing, printing, or photocopying. The paper must be white, opaque and unglazed, and only one side of the paper may be used. Motion papers shall be on paper 8 1/2 by 11 inches and shall contain a caption setting forth the name of the court, the title of the case, the case number, and a brief descriptive title. Text shall be double-spaced; headings, quotations and footnotes may be indented and single-spaced. Either a proportionately spaced typeface of 14 points or more, or a monospaced typeface of no more than 10 1/2 characters per inch, shall be used for text, quotations, and footnotes. A proportionately spaced typeface has characters with different widths (e.g., an acceptable proportionately spaced typeface is Times New Roman, 14 point). A monospaced typeface has characters with the same advanced width (e.g., an acceptable monospaced typeface is Courier New, 12 point). All margins must be at least 1 inch. Page numbers shall be placed in the bottom margin, but no text or footnotes may appear there. Text shall be in roman, non-script text, although italics, underline, or bold may be used for emphasis. Case names and signals shall be underlined or in italics. Headings shall be underlined, in italics, or in bold. All parties must file the original and four copies of all motions filed in the Court of Appeals and the original and seven copies of all motions filed in the Supreme Court.
- **Arizona Rules of Criminal Procedure, Rule 31.13.** Appellate briefs
 - a. Time for Filing; Manner of Filing. In all cases other than capital cases, the appellant's opening brief shall be filed within 40 days after the mailing of the notice as provided by Rule 31.10. The appellee's brief shall be filed within 40 days after service of the appellant's brief. The appellant may file a reply brief

within 20 days after service of the appellee's brief, or the appellant may file a notice to the effect that no reply brief will be filed, at which time the appeal will be deemed to be "at issue." Otherwise, the appeal will be deemed to be "at issue" upon the filing of the reply brief or 20 days after service of the appellee's brief, whichever first occurs. The time for filing briefs in capital cases shall be governed by subdivision (f) of this rule. Briefs and appendices may be filed in person, electronically or by mail. The term "mail" shall include every type of delivery service except same day hand delivery. Briefs and appendices shall be deemed timely filed if, within the time allowed for filing, they are either (i) received by the Clerk of the Court, or (ii) they are addressed to the Clerk of the Court and picked up by or delivered either to a third party commercial carrier for delivery within three calendar days or to the United States Postal Service. Except in the case of same day hand delivery, filing by third-party commercial carrier or by mail must be accompanied by the party's or attorney's separate signed certification indicating the date of delivery to or pick up by either the carrier or the United States Postal Service.

o b. Form and Length.

- (1) Form. A brief shall comply with Rule 31.12, except that the brief's covers and the components of the brief excluded from the word count computation are exempt from the 14 point or 10 1/2 characters per inch typeface requirement. Briefs shall be in pamphlet form and shall have covers. The front cover shall contain (1) the name of the court, (2) the number of the case, (3) the title of the case, (4) the title of the brief (e.g., opening brief), and (5) the name and address and state bar number of counsel representing the party on which behalf the brief is filed. The covers of briefs shall be colored as follows: the appellant's opening brief, blue; the appellee's answering brief, red; any reply brief, gray; the brief of an intervenor or amicus curiae, green.
- (2) Length. Except by permission of the court, (i) a principal brief in a non-capital case prepared in a proportionately spaced typeface may not exceed 14,000 words, and a reply brief may not exceed 7,000 words, and neither may have an average of more than 280 words per page, including footnotes and quotations; and (ii) a principal brief in a non-capital case prepared in a monospaced typeface may not exceed 40 pages, and a reply brief may not exceed 20 pages. The above word and page limits do not include the table of contents, table of citations, certificate of service, certificate of compliance, and any addendum containing statutes, rules, regulations, etc. The brief must be accompanied by a certificate of

compliance that states the brief's line spacing and states either (i) the brief uses a proportionately spaced typeface, together with the typeface, point size, and word count, or (ii) the brief uses a monospaced typeface, together with the number of characters per inch. A party preparing this certificate may rely on the word count of the processing system used to prepare the brief. The length of briefs in capital cases is governed by subsection (f) of this rule.

- (3) Briefs not clearly legible shall be stricken by the court.

○ c. Contents.

- (1) Appellant. The appellant's brief shall include:
 - (i) A table of contents with page references.
 - (ii) A table of citations, which shall alphabetically arrange and index the cases, statutes, and other authorities cited, with references to the pages of the brief on which they are cited.
 - (iii) A statement of the case, indicating briefly the basis of the appellate court's jurisdiction, the nature of the case, the course of the proceedings and the disposition in the court below.
 - (iv) A statement of facts relevant to the issues presented for review, with appropriate references to the record. The statement shall not contain evidentiary matter unless material to a proper consideration of the issues presented, in which instance a reference shall be made to the record or page of the transcript where such evidence appears. The statement of facts may be combined with the statement of the case.
 - (v) A statement of the issues presented for review. The statement of an issue presented for review will be deemed to include every subsidiary issue fairly comprised therein.
 - (vi) An argument which shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on. The argument may include a summary. With respect to each contention raised on appeal, the proper standard of review on appeal shall be identified, with citations to relevant authority, at the outset of the discussion of that contention. Citation of authorities shall be to the volume and page number of the official reports and also when possible to the unofficial reports.
 - (vii) A short conclusion stating the precise relief sought.

- (viii) An appendix if desired.
- (2) Appellee. The appellee's brief shall be of like character and arrangement as that of the appellant except that no statement of the case is required unless the appellee finds the statement presented by the appellant to be insufficient or incorrect.
- (3) Reply Brief. The reply brief shall be confined to a response to questions of law or fact raised by the appellee's brief.
- (4) Appendix.
 - (i) The appellate brief for either party may include an appendix of pertinent statutes, treaties, regulations, rules, and instructions, additional relevant items in the record, and extended quotations from cases and authorities where such quotations are required for proper presentation of the issues.
 - (ii) If an appendix is included, it shall be separated from the main body of a brief filed in hard copy by a blank page of distinctive color. It shall be numbered with arabic numerals, and it shall not constitute a part of the brief for the purpose of determining length under Rule 31.13(b). If the brief is filed electronically, and if the appendix contains multiple documents, such documents shall be electronically bookmarked in the appendices' table of contents.
- d. Extension of Time. Upon a showing of exceptional circumstances, the Appellate Court may extend the time for filing a brief.
- e. Non-Compliance. The Appellate Court may strike a brief which does not substantially conform to the requirements of this rule.
- f. Capital Cases.
 - (1) Time for Filing. In capital cases, the appellant's opening brief shall be filed within 90 days after the court issues a notice that the record is complete. The appellee's brief shall be filed within 60 days after service of the appellant's brief. Appellant's reply brief shall be filed within 30 days after service of appellee's brief.
 - (2) Length. Except by permission of the court, (i) a principal brief in a capital case prepared in a proportionately spaced typeface may not exceed 28,000 words, and a reply brief may not exceed 14,000 words, and neither may have an average of more than 280 words per page, including footnotes and quotations; and (ii) a principal brief in a capital case prepared in a monospaced typeface may not exceed 80 pages, and a

reply brief may not exceed 40 pages. All other requirements for the form of the briefs shall be as specified in subsection (b) of this rule.

- **Rules of Civil Appellate Procedure, Rule 16. Amicus Curiae**
 - (a) Filing and Form of Brief; Participation in Oral Argument. A brief of an amicus curiae may be filed only if accompanied by written consent of all parties or by leave of court granted upon motion, except that leave or written consent shall not be required when the brief is presented by the State of Arizona or an officer or agency thereof, or by a county, city, or town. The brief shall be lodged with the motion, if any. The motion for leave shall identify the interest of the applicant, state that the applicant has read the relevant brief, petition or motion and shall state the reasons accepting applicant's amicus curiae brief would be desirable. A party desiring to respond to the amicus brief shall file the response within 20 days of service of a brief filed with consent or by a governmental entity or agency, or within 20 days of the Court's order granting a motion for leave to file an amicus brief. Rules 13 and 14 shall govern the form of an amicus brief, except that it shall not exceed 12,000 words in length if done in proportionately spaced typeface, or 35 pages if done in monospaced typeface, unless otherwise permitted by the court. An amicus curiae may participate in the oral argument only by leave of the appellate court.
 - (b) Time and Length Limits Applicable to Amicus Curiae Briefs in the Supreme Court. Parties desiring to file an amicus curiae brief shall file such briefs as provided by this rule, except that an amicus curiae brief relating to a special action petition shall be filed as expeditiously as possible after the special action petition is filed, as provided for in Rule 7(g), Rules of Procedure for Special Actions.
 - (1) Briefs Filed Prior to a Decision by the Court to Grant Review. Unless otherwise ordered by the Court, an amicus brief filed in support of a petition for review or a response to a petition for review by the State, a county, city, or town, or an amicus brief accompanied by written consent of all parties, or a motion for leave to file the brief, shall be filed no later than 21 days after the filing of the response to the petition for review. Such briefs shall comply with the form and length requirements of Rules 6(c) and 23(c) exclusive of any appendix.
 - (2) Briefs filed after the Court has granted review. After the Court has granted review, and unless otherwise ordered, an amicus brief filed by the State, a county, city, or town, or an amicus brief accompanied by written consent of all parties or a motion for leave to file an amicus brief, shall be filed no later than 10 days after the date ordered by the Court at

the time review was granted for filing supplemental briefing by the parties in the particular case. Such briefs shall comply with Rule 6(c) and shall not exceed the page limitation imposed for the parties' supplemental briefs.

- (3) Responses to amicus curiae briefs. A party wishing to respond to an amicus brief shall file the response within 20 days of service of a brief filed with consent or by a governmental entity or agency, or within 20 days of the Court's order granting a motion for leave to file an amicus brief. The response shall comply with the page and formatting requirements imposed on the particular amicus brief to which it relates.
- (4) Late-filed briefs and responses. Leave for filing a late amicus or response brief shall be granted only for good cause shown.
- **A.R.S. § 12-2106. Penalty for taking frivolous appeal or appeal for delay**
 - When the supreme court is of the opinion that an appeal has been taken for delay, and that there was not sufficient grounds for taking an appeal, it may include in its judgment an additional amount, not exceeding ten per cent of the judgment appealed from, if the judgment is for the recovery of money, and not exceeding five hundred dollars in other cases, as damages for a frivolous appeal.
- **Rules of Civil Appellate Procedure, Rule 25. Sanctions for Delay or Other Infractions**
 - Where the appeal is frivolous or taken solely for the purpose of delay, or where a motion is frivolous or filed solely for the purpose of delay, or where any party has been guilty of an unreasonable infraction of these rules, the appellate court may impose upon the offending attorneys or parties such reasonable penalties or damages (including contempt, withholding or imposing of costs, or imposing of attorneys' fees) as the circumstances of the case and the discouragement of like conduct in the future may require.

Rule 8. Appeals

(a) A decision of a Superior Court in a special action shall be reviewed by appeal where there is an equally plain, speedy, and adequate remedy by that means. Procedure for appeal shall be as prescribed by the applicable rules, except that on application of either party, for cause shown at any time after filing of notice of appeal, the court in which the appeal is pending may waive or order an acceleration of any or all appeal procedures. Where there is no equally plain, speedy, and adequate remedy by appeal, a judgment in a special action in a Superior Court may be reviewed by a special action directed against the original defendants.

(b) Grant or denial of special action relief by the Court of Appeals, including a refusal to take jurisdiction in the case, shall be reviewed by the Supreme Court only upon petition for review,

pursuant to Rules 22 and 23, Rules of Civil Appellate Procedure. A party seeking a stay or expedited processing of the petition for review may file a motion in the Supreme Court.

(c) Any petition for review filed in accordance with rule 8(b) should be captioned as follows: "Petition for Review of a Special Action Decision of the Court of Appeals."

Applicable Decisions and Rules

- **Rules of Civil Appellate Procedure, Rule 22. Motions for Reconsideration**
 - (a) Necessity. The filing of a motion for reconsideration in the Court of Appeals is not a prerequisite to the filing of a petition for review pursuant to Rule 23.
 - (b) Time for Filing; Extension of Time. Any party desiring reconsideration of a decision of an appellate court may file a motion for reconsideration in the appellate court within fifteen days after the filing of a decision by the appellate court. The motion shall not be amended except by leave of court. A request for extension of time shall be filed in the appellate court that issued the decision or opinion in question.
 - (c) Response. No response to a motion for reconsideration will be filed unless requested by the Court, but a motion for reconsideration will not be granted in the absence of such a request.
 - (d) Form, Length and Contents. A motion for reconsideration shall be directed solely to discussion of those specific points or matters in which it is claimed the appellate court erred in determination of facts or law. It shall comply with the provisions of Rule 6(c) not otherwise suspended by any Administrative Order of the Supreme Court. Except by permission of the court (1) a motion for reconsideration or a response prepared in a proportionately spaced typeface may not exceed 3500 words and may not have an average of more than 280 words per page, including footnotes and quotations; (2) a motion for reconsideration or a response prepared in a monospaced typeface may not exceed 10 pages and may not have an average of more than 350 words per page including footnotes and quotations; and (3) a handwritten motion for reconsideration may not exceed 12 pages. The motion or response shall be accompanied by a certificate of compliance that states either (1) that the motion or response uses a proportionately spaced typeface of 14 points or more, is double spaced using a roman font and contains [blank] words, or (2) that the motion or response uses a monospaced typeface of no more than 10.5 characters per inch and does not exceed 10 pages, or (3) that the motion for reconsideration was handwritten and does not exceed 12 pages. A party

preparing this certificate may rely on the word count of the processing system used to prepare the petition for review.

- (e) Motions Not Permitted. Unless permitted by specific order of the appellate court, no party shall file a motion for reconsideration of (1) an order denying a motion for reconsideration; (2) an order denying a petition for review; or (3) an order declining to accept jurisdiction of a petition for special action.

Rule 9. Rehearing; Supreme Court

When the Supreme Court accepts jurisdiction of a Special Action and issues its decision in writing thereon:

(1) If it is stated therein that the decision may be effective after the mandate is issued, the Clerk shall give notice in writing to the respective attorneys of all persons joined in the action, addressing to them a copy of the decision, by depositing it in the mail, postage prepaid. Any party desiring a reconsideration may within fifteen days after such mailing file a motion in writing for a reconsideration, specifying the particular grounds for reconsideration. A copy of the motion shall be served upon the attorney for the adverse parties. Service shall be made as provided in Supreme Court Rule 10.

(2) When it is stated in the decision that the writ shall become effective immediately or that the mandate shall issue immediately the decision is final, and no motion for reconsideration may be made.

Rule 10. Review of Industrial Commission Awards by the Court of Appeals

(a) Review by the Court of Appeals of The Industrial Commission of Arizona awards in workmen's compensation, occupational disease, and other matters entertained by The Industrial Commission which are reviewable by the Court of Appeals by writs of certiorari, shall be made in accordance with the procedures set forth in this Rule. Review pursuant to this Rule shall take precedence over all civil cases except matters of general public interest, election cases, and those involving or affecting the Corporation Commission.

(b) Such review shall be instituted by a petition designated as a "Special Action-Industrial Commission." The petition need not be verified but shall be signed by the petitioner or his attorney. The caption of the petition and all orders, writs, notices of appearance and briefs filed in the proceedings shall name each party to the award, including The Industrial Commission, and shall contain an appropriate designation of each party setting forth the interest of the

party. The caption shall also contain the Court of Appeals case number, The Industrial Commission claim number and the insurer's claim number. The petition shall identify the award which is sought to be reviewed, including the date thereof, and shall request that the Clerk of the Court of Appeals issue a "Writ of Review" directing The Industrial Commission to certify its records, proceedings and evidence to the Court of Appeals in accordance with subsection (c) of this Rule.

(c) The petitioner shall tender to the Clerk of the Court of Appeals a writ of review at the time of the filing of the petition. The writ of review shall direct The Industrial Commission to certify its claims file to the Court of Appeals within 10 days from the date of the issuance of the writ. The writ shall be issued by the Clerk of the Court of Appeals upon the filing of the petition, no order of the Court being required.

(d) The petition and the writ shall not be served until after the petition has been filed with the Court of Appeals and the writ issued. Conformed copies of the petition and the writ shall be served upon The Industrial Commission and upon the State Compensation Fund, if it is a party, by service upon their respective Chief Counsel. Service of the petition and writ upon the parties who appeared before The Industrial Commission by counsel may be effected as provided by Rule 5(c) of the Rules of Civil Procedure. In the event a party appeared before The Industrial Commission without counsel, service may be made by mailing to that party's last known address as reflected by The Industrial Commission claim file. Service is complete as of the date of mailing. Any service required under this Rule 10 may be made by the party, his attorney or his agent. Proof of service shall be promptly filed in the Court of Appeals.

(e) Subject to the provisions of subsection (f) of this Rule, all briefs, motions and other matters filed in the Court of Appeals subsequent to the filing of the original petition and writ of review, except the certified claims file, shall be served upon the attorney appearing for the party to be served. In the event that the party appears without an attorney, then the service shall be upon that party. Service shall be made in accordance with the provisions of Rule 5(c), Rules of Civil Procedure. The mailing of a copy to The Industrial Commission or to the State Compensation Fund rather than to their respective Chief Counsel shall not be considered compliance with this Rule.

(f) Any party, other than the petitioner, desiring to participate in the determination of the matter before the Court of Appeals shall file a "notice of appearance" with the Clerk of the Court of Appeals within 10 days from the service provided for in subsection (d) of this Rule, and shall serve a copy of the notice upon all other parties. In the event that a respondent could have filed a special action petition in the first instance and desires to present a request for affirmative relief to the Court of Appeals, the respondent shall add to his notice of appearance a statement that he will request affirmative relief, except that after the expiration of the time

provided for in A.R.S. § 23-943(H) no notice of appearance by a respondent containing a statement that affirmative relief will be requested shall be filed later than 10 days from the date of the service provided for in subsection (d) of this Rule. The actual request for affirmative relief shall be set forth in that respondent's answering brief. If a respondent does not file and serve a notice of appearance, there is no requirement that he be served with copies of any briefs, motions or other matters filed in the Court of Appeals subsequent to the original petition and writ of review or with a copy of any later order, decision or determination entered by the Court of Appeals. The failure to file a notice of appearance shall not, in the discretion of the Court of Appeals, and upon leave being granted, preclude the party from later formal participation in the matter before the Court of Appeals.

(g) The Court of Appeals may dismiss a petition or quash the writ of review upon the grounds of dismissal applicable to civil appeals.

(h) The opening brief of the petitioner shall be served and filed within 30 days from the return date of the writ of review. Answering briefs and reply briefs shall be served and filed as provided in the Arizona Rules of Civil Appellate Procedure.

(i) The dismissal of a petition may be by an order. A disposition on the merits shall be by an opinion or by a memorandum decision.

(j) Costs shall not be taxed against The Industrial Commission of Arizona.

(k) Except as herein provided, the Arizona Rules of Civil Appellate Procedure, and the procedures heretofore in effect in the matter of the review of awards of The Industrial Commission by the Court of Appeals, shall apply.

Applicable Decisions and Rules

- On special action industrial commission review, jurisdiction of court of appeals is limited to, but may also include, all matters which administrative law judge could consider in his review of his own decision. ***Israel v. Industrial Com'n of Arizona*** (App. Div.1 1983) 137 Ariz. 124, 669 P.2d 102.
- Confession of error is not absolute on a petition for special action to review a decision of a hearing officer of the industrial commission and may be waived in the discretion of the court of appeals. ***Evertsen v. Industrial Commission*** (App. Div.1 1977) 117 Ariz. 378, 573 P.2d 69.
- **Arizona Rules of Civil Procedure, Rule 5(c).** Service After Appearance; Service After Judgment; How Made

- (1) Serving an Attorney. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.
- (2) Service in General. A paper is served under this rule by:
 - (A) handing it to the person;
 - (B) leaving it:
 - (i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or
 - (ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;
 - (C) Mailing it via U.S. mail to the person's last known address--in which event service is complete upon mailing; or
 - (D) delivering the paper by any other means, including electronic means, if the recipient consents in writing to that method of service or if the court orders service in that manner--in which event service is complete upon transmission.
- (3) Certificate of Service. The date and manner of service shall be noted on the original of the paper served or in a separate certificate. If the precise manner in which service has actually been made is not so noted, it will be conclusively presumed that the paper was served by mail. This conclusive presumption shall only apply if service in some form has actually been made.
- (4) Service After Judgment. After the time for appeal from a judgment has expired or a judgment has become final after appeal, the service of a motion, petition, complaint or other pleading required to be served and requesting modification, vacation or enforcement of that judgement, shall be served pursuant to Rules 4, 4.1 or 4.2, as applicable, of these rules as if serving a summons and complaint.
- **A.R.S. § 23-943(H)**
 - The decision upon review shall be final unless within thirty days after the date of mailing of copies of such decision to the parties, one of the parties applies to the court of appeals for a writ of certiorari pursuant to section 23-951. The decision shall contain a statement explaining the rights of the parties under this section and section 23-951.